



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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:
AMERICAN LECITHIN COMPANY, et al., :
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Plaintiffs, :
:
-against- :
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CARSTEN MATTHIAS REBMANN, :
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Defendant. :
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No. 12 Civ. 929 (VSB)

ORDER

VERNON S. BRODERICK, United States District Judge:

By letter dated July 16, 2014, (Doc. 125), Plaintiffs state that Dr. Herbert Rebmann—having spent the previous two years refusing to be deposed in New York, as described in the Court’s Order dated July 3, 2014, (Doc. 124)—now refuses to be deposed at all, regardless of location, on account of concerns for his health. Plaintiffs therefore request a telephone conference at which Dr. Rebmann can explain his concerns. (Doc. 125.) For the following reasons, that request is DENIED.

Dr. Rebmann submitted on May 27, 2014 a declaration and a description of his travels of the past two years, and later submitted an affidavit from his physician dated June 6, 2014, in an effort to justify holding his deposition in Germany. In his declaration, Dr. Rebmann makes no mention of health concerns; details his ongoing business and personal travels, including a trip via airplane to China at the beginning of this year; and acknowledges that, in his role as Co-President of Plaintiffs American Lecithin Company and Lipoid LLC he supervises this lawsuit. Despite Dr. Rebmann’s acknowledgement that he continues to conduct business and continues to travel to do so, his physician claims that Dr. Rebmann should not be subjected to business

situations and should refrain from traveling to New York to be deposed. Having reviewed those submissions, I ordered that the deposition should occur on or before August 3, 2014, either in New York or in Germany, with Plaintiffs bearing certain costs of the deposition depending on its location, as discussed during the July 2, 2014 conference and described in the Court's July 3, 2014 Order. (Docs. 124, 127.) Plaintiffs' counsel had the opportunity to supplement the record during the July 2, 2014 conference, but said "[t]here is really nothing more I can say beyond the submissions." (Doc. 127 at 11.) Accordingly, it is hereby

ORDERED that Plaintiffs show cause: (1) why their claims against Defendant should not be dismissed for failure to prosecute pursuant to Federal Rule of Civil Procedure 41(b), and/or as a sanction for Dr. Rebmann's refusal to be deposed pursuant to Federal Rule of Civil Procedure 37(d)(1)(A)(i) & (d)(3); and (2) why they should not be assessed all expenses to date, including reasonable attorney's fees, that Defendant incurred in attempting to depose Dr. Rebmann;

And it is further ORDERED that Third-Party Defendants show cause why, in light of Dr. Rebmann's refusal to be deposed concerning the corporate structure of and relationship among the Plaintiffs and the Third-Party Defendants, I should not accept as established pursuant to Federal Rule of Civil Procedure 37(d)(1)(A)(i) & (d)(3) the Defendant's allegations of alter ego for purposes of effecting service and establishing personal jurisdiction.

The parties are directed to file on ECF no later than July 28, 2014, a proposed briefing schedule to address the matters raised in this Order.

SO ORDERED.

Dated: July 21, 2014
New York, New York


Vernon S. Broderick
United States District Judge